

Matt v Eusebio

2008 NY Slip Op 32875(U)

October 16, 2008

Supreme Court, New York County

Docket Number: 112938/08

Judge: Walter B. Tolub

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: TOLUB
Justice

PART 15

MATT, JOHN

INDEX NO. 112938/08

- v -
PEDRO EUSEBIO

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

OCT 21 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 10/17/08

[Signature]

WALTER B. TOLUB J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST RECEIVED

THIS DOCUMENT IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----x
JOHN MATT

Plaintiff,

-against-

PEDRO EUSEBIO

Defendant.

Index No. 112938/08
Mtn Seq. 001

FILED
OCT 21 2008
COUNTY CLERK'S OFFICE
NEW YORK

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WALTER B. TOLUB, J.:

This is Plaintiff's motion for an order restraining the Defendant from prosecuting the Housing Court action to evict Plaintiff entitled Eusebio v. Matt, NYC Civ. Ct. L&T 60219/08, and to consolidate said action with the instant proceeding.

Facts

Plaintiff in this action claims that he entered into a written contract with the Defendant to buy the shares and have possession of the apartment located at 58 West 105th Street, Apt. 5D, New York, NY ("Premises") on May 23, 1997 by written agreement ("Contract") (Pl. Ex. A, Contract). The Contract states:

I, PEDRO EUSEBIO do hereby agree to transfer (sell) my shares of 58 west 105th STREET HOUSING DEVELOPMENT FUND CORPORATION APT. 5D and all my rights shall be included in this deal. The purchaser (beneficiary) is Mr JOHN MATT and he will soon become the sole owner of these stocks as soon as he sign [sic] this bill of sale. The total price of the transfer will be \$4,500. The deal will [sic] completed and valid upon delivery of the vacated apartment for personal occupancy by

[* 3]

the new owner Mr JOHN MATT.

NAME OF SELLER: PEDRO EUSEBIO
NUMBER OF SHARES: 350 TWO HUNDRED & FIFTY
ADDRESS OF PROPERTY: 58 W 105th St Apt. 5D,
N.Y. N.Y.
NAME OF BUYER: JOHN MATT
DATE: MAY 23, 1997

The contract was signed by both parties and notarized. Defendant claims that he never signed the document and that the signature is a forgery.

Plaintiff claims that on the same day that the Contract was signed, Defendant tendered the Certificate of Shares to the Premises to the Plaintiff but did not sign the assignment provision on the reverse side of the certificate (Pl. Ex. B). Defendant assured Plaintiff that he would effect the transfer of shares with the consent of the owners of the building, HDFC. Plaintiff also asserts that on the same day the Contract was signed, he received the keys to the apartment, paid the maintenance arrears which had accrued against the Defendant took possession of the apartment. Plaintiff claims that he paid regular maintenance fees directly to the cooperative association every month with his personal checks.

About a year after the Contract was entered into, Defendant moved to an undisclosed address in Ohio. Defendant would call Plaintiff annually and assure him that he would soon transfer the shares of the apartment to him.

In January 2006, Defendant changed the locks on the Premises

and removed all of Plaintiff' s furniture from the apartment. Plaintiff then filed an action in the NYC Civil Court entitled John Matt v. Pedro Eusebio, NYC L&T 59902/06. On March 30, 2006, the Housing Court Judge in that matter held that Plaintiff was illegally locked out of the apartment by Defendant and that Plaintiff was entitled to the possession of the Premises. The Housing Court Judge specifically stated that the decision was not a ruling as to the dispute of the transfer of shares and money and that those matters were severed from that action (Pl. Ex. C).

Following the March 30, 2006 Order of the Housing Court, Defendant brought a series of four holdover actions against the Plaintiff. The first three actions were dismissed or discontinued as defective by March 2007. The fourth action was commenced in the Housing Court in March 2008 and is currently pending in the NYC Civil Court Housing Part (Eusebio v. Matt, L&T 60129/08) ("Housing Court Action").

The underlying action was commenced in this Court a few months later and seeks ownership of the cooperative shares by virtue of adverse possession and specific performance. As such, Plaintiff seeks to have this action consolidated with the Housing Court Action so that all matters may be decided together. Defendant does not specifically oppose Plaintiff's motion for consolidation but opposes a stay in the action because he claims he has been rendered homeless and needs possession of the

Premises forthwith. Defendant also claims that he did not enter into a Contract with Plaintiff to sell the Premises. Defendant states that his signature on the Contract is a forgery. Defendant further argues that Plaintiff has never paid rent and that over the past twelve years, he has not had the right to occupy the Premises.

Discussion

First and foremost, the Court notes that Defendant has not directly opposed Plaintiff's motion for consolidation only Plaintiff's motion for a stay. CPLR 602(a) states that

[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay (CPLR 602[a])

Here, the issues raised in the Housing Court Action deal with the right to possession of the Premises and many of Plaintiff's defenses and counterclaims are equitable in nature.

It is also well settled that consolidation is generally favored by the courts in the interest of judicial economy and ease of decision making unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right. The mere fact that a case may be somewhat delayed by such consolidation will not suffice to bar it (see, Siegel, NY Prac § 128 [2d ed]). In the instant matter, Plaintiff is seeking a stay

of the Housing Court Action so that all issues regarding the occupancy and ownership of the Premises may be decided at the same time. Defendant has not sufficiently shown that he will suffer any prejudice, Defendant makes no mention of his relocation to Ohio and his apparent return to New York. As such, Plaintiff's motion to consolidate is granted and the motion for a Stay of the Housing Court Action is rendered moot

As to the underlying claims in the Housing Court Action and the Action filed in this court, it would be premature for this Court to decide the underlying claims in since the issues have not been fully briefed before this Court and because of the evidentiary disputes raised in the instant motion alone. Accordingly, it is

ORDERED that Plaintiff's motion to consolidate the above-captioned action with the action in the Housing Court entitled Eusebio v. Matt, NYC Civ. Ct. L&T 60219/08, is granted and the cases are consolidated under the index number 112938/2008 and the consolidated action shall bear the following caption:

-----x
 JOHN MATT
 Plaintiff,
 -against-
 PEDRO EUSEBIO
 Defendant.

Index No. 112938/08

-----x

[*7]
and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that the parties are directed to serve a copy of this order with notice of entry upon the Clerk of the Housing Court; and it is further

ORDERED that the Clerk of the Housing Court is directed to transfer the action to the Clerk of the Supreme Court; and it is further

ORDERED that the parties are directed to serve a copy of this order with notice of entry upon the Clerk of the Supreme Court; and it is further

ORDERED that upon service on the Clerk of the Supreme Court of a copy of this order with notice of entry, the Clerk shall consolidate the papers in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that a copy of this order with notice of entry shall also be served upon the Clerk of the Trial Support Office, who is hereby directed to mark the court's records to reflect the consolidation; and it is further

ORDERED that Plaintiff's motion for a stay is rendered moot. and it is further

Counsel for the parties are directed to appear for a conference on December 12, 2008 at 11:00AM in room 335 at 60 Centre Street.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 10/16/08

HON. WALTER B. TOLUB, J.S.C.

FILED
OCT 21 2008
COUNTY CLERK'S OFFICE
NEW YORK